

TOWN OF TEWKSBURY, MASSACHUSETTS

ZONING BOARD OF APPEALS

RULES OF PROCEDURE

(Amended as of January 29, 2009)

ARTICLE I - ORGANIZATION

SECTION 1.1 - ELECTIONS

The officers of the Board shall include, but need not be limited to, a chairman, a vice chairman and a clerk. The chairman and vice chairman shall be chosen from among the members of the Board and the clerk shall be a member or an associate member.

At the first meeting following the qualification of the annual appointee(s), the Board shall elect all its officers for the ensuing year. In the event of a vacancy in any office, at the first meeting thereafter at which the Board is at full strength, such vacancy shall be filled. Associate members may participate in such election with voice but without vote.

SECTION 1.2 - CHAIRMAN

The chairman shall preside at each meeting and each hearing and the chairman shall also vote and be recorded on matters coming before the Board. Subject to the General Laws, the Zoning By-Law and unless and until overruled by a majority of the Board sitting at the time, the chairman shall decide all points of order and matters of procedure. The chairman shall represent the Board or appoint a representative from among the members and associate members as may be found necessary or desirable for liaison with other Town agencies.

In addition to the powers granted by the General Laws, the Zoning By-Law and Town By-Laws and subject to rules and further instructions of the Board, the chairman shall transact all official business of the Board, assign the writing of the Board's memoranda of its decisions, supervise and direct the work of all Board employees and request necessary help and exercise general supervisory powers. The chairman shall at each meeting report on all correspondence and other transactions that otherwise have not been brought to the attention of the Board.

SECTION 1.3 - VICE CHAIRMAN

The vice chairman shall act as chairman and shall have all of the powers and duties of the chairman whenever the chairman is absent, disabled or otherwise unable to perform his or her duties.

SECTION 1.4 - CLERK

Subject to the direction of the Board and its chairman, the clerk shall have charge of records of the Board, shall ensure that the roll is taken at all Board hearings and at other meetings, that minutes of the Board's proceedings are kept and that other necessary files and indexes are compiled and maintained. Any or all of the foregoing duties may be delegated to an assistant clerk who need not be a member or associate member.

The clerk shall act as chairman and shall have all of the powers and duties of the chairman whenever both the chairman and the vice chairman are absent, disabled or otherwise unable to perform their duties.

SECTION 1.5 - ASSOCIATE MEMBERS

The chairman of the Board shall designate one of the associate members to sit on the Board in case any Board member is absent, is unable to act or has a conflict of interest. In the event of a vacancy on the Board, the chairman may designate one of the associate members as an acting member of the Board until someone is duly appointed and qualified to fill the unexpired portion of the vacated term.

ARTICLE II - APPLICATION FOR RELIEF

SECTION 2.1 - APPLICATION FORM

Every application, appeal or petition for relief shall be made on the official form, a copy of which is attached hereto as Form A1 and made part hereof. Copies of the official form shall be available from the Town Clerk and the Building Commissioner. Even if purported to be an application, every communication shall be treated as mere notice of intention to seek relief until such time as an application is submitted on the official form. All applications, appeals and petitions shall be filed with the Town Clerk and with the Board.

All information called for by the official form shall be furnished by the applicant in the manner therein prescribed.

SECTION 2.2 - MATERIALS TO ACCOMPANY PETITION

Each application, appeal or petition shall be accompanied by at least fourteen (14) copies of legible plans and other materials and documents showing all details and information relevant to the relief requested. Such materials shall include at a minimum, but need not be limited to, a site plan, any plan required by the Zoning By-Law and when construction or alteration of a structure is proposed, floor plans, elevations, renderings and/or photographs.

If the owner is not the applicant, the application must be accompanied by a notarized document signed by the owner or owners authorizing the application. If the representative of the owner or the applicant is not a licensed attorney-at-law, then a letter from the owner and/or the applicant must be filed authorizing the representative to act in behalf of the owner and/or applicant. In addition, a list of the parties in interest certified by the Board of Assessors must be filed, together with a copy of the deed of the property to the current owner.

Subsection 2.2.1 - General Requirements for Plans

All plans shall be drawn to scale, which scale shall be stated or illustrated thereon. The scale for site plans shall not be smaller than one inch equals twenty (20) feet. Floor plans and elevations shall not be smaller than one-quarter inch equals one (1) foot.

Each plan shall clearly state the name and address of the person, by whom and the date when it was prepared. Any plan which is more than six (6) months old must be certified by the maker that no changes have occurred and that the plan is still current.

All proposed data shall be indicated in red on all plans and elevations.

Subsection 2.2.2 - Site Plans

Appeal site plans shall be drawn to a scale not smaller than one (1) inch equals twenty (20) feet and showing at least the following:

- A. A north arrow;
- B. The lot lines, dimensions and area of the lot(s) in question, which, in the case of a proposed subdivision or combination, shall include both the existing lot(s) and the proposed lot(s);
- C. The locations and dimensions of all principal and accessory buildings, other structures, driveways and parking areas (both existing and proposed) on the lot(s) in question;
- D. The boundary lines and names of owners of all properties immediately adjacent to the lot(s) in question;
- E. The locations of all principal and accessory buildings, other structures, driveways and parking areas on such immediately adjacent properties;
- F. The names of all streets shown on the site plan and the widths of all streets, sidewalks and rights-of-way adjacent or appurtenant to the lot(s) in question; and

- G. Any larger area and any other dimensions or details (such as contours and soil conditions) which may be necessary to an understanding of the particular application appeal or petitioner questions raised thereby.

EXCEPTION: If an application or petition is submitted which proposed to change the use of an existing building or proposes to make a physical alteration to a structure where the building or structure meets and will continue to meet all setback requirements, the site plan may omit data required by clause (5) if the data is in reference to an element which is more than twenty (20) feet beyond the boundaries of the immediately adjacent properties in question.

Subsection 2.2.3 - Floor Plans, Elevations and Renderings

Each application, appeal or petition relating to construction or alteration of a structure shall be accompanied by such floor plans and elevations and such renderings and/or photographs as are sufficient to disclose in detail the existing structure(s) and all proposed alterations or new construction. Floor plans and elevations shall be drawn to a scale not smaller than one-quarter inch equals one (1) foot.

In addition, each application, appeal or petition shall be accompanied by drawings or photographs sufficient to enable careful evaluation of the impact the proposal will have on any other building on the lot(s) or on immediately adjacent properties.

SECTION 2.3 – TOWN OF TEWKSBURY MASSACHUSETTS DIGITAL DATA SUBMISSION REQUIREMENTS:

The Town of Tewksbury Digital Data Submission Requirements apply to any site or subdivision plan and infrastructure projects (water/sewer/drainage installation or repair, road rehabilitation and other capital improvements). The applicant, person or entity performing the work shall provide the Town with a digital copy of the final approved plans no earlier than one (1) month before the work is scheduled to commence. A digital copy of the as-built drawings will also be required and these will be submitted no later than six (6) months after project completion. The digital copy of the final set of approved plans must follow the requirements listed below:

1. All plans and specifications must be submitted on electronic media. Acceptable file formats include: AutoCAD *.dwg, AutoCAD *.dxf, ArcView *.shp, or ArcGIS Geodatabase. The files must be identical to the printed plan and contain all information included on the “as-built” plan. If plans and specifications are not “Tewksbury GIS Ready” data, as defined below, a \$200.00 fee per submission shall apply.

“Tewksbury GIS Ready” data is defined as:

- Data delivered digitally in GIS shapefile or geodatabase format.
- The data shall be in the NAD 1983 MA State Plane Coordinate System.

- The data shall be delivered in a way that would create minimal work for the Town staff when they update the GIS system as determined by the Engineering Division.
2. All digital mapping must be delivered in the Massachusetts State Plan Coordinate System with a horizontal datum of NAD83 and a vertical datum of 1927 NGVD. Each plan must include a minimum of one (1) survey-derived (bearings and distances listed) reference to a permanent in-ground feature such as: catch basin, manholes, stone bound, municipal benchmark or other readily identifiable marker. The latitude and longitude of the in-ground feature must be provided with accuracy of plus or minus centimeter.
 3. Each feature must be organized in the CAD or GIS data structure as a separate layer. For example, there must be separate CAD layers for buildings, roads, road centerlines, surface water, wetlands, sewer, water, stormwater, etc. Having all these features in a single CAD layer or GIS file will not be accepted.
 4. All data will be topologically clean, meaning that polygons are closed (no overshoots or undershoots) and lines connect at nodes. Features that naturally connect such as driveways to roads must connect seamlessly. Features under text should not be erased or 'broken' in order to make text clearer.
 5. Documentation of the data format must be provided with a description of the CAD layer and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.

The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.

SECTION 2.4 - FILING FEE

Each application, appeal or petition shall be accompanied by a filing fee from the most recent Zoning Board of Appeals Fee Schedule. Checks are to be made payable to the Town of Tewksbury. Any application not accompanied by a filing fee may not be filed.

SECTION 2.5 - DOCKET NUMBER

Each application, appeal or petition shall be assigned a file or docket number comprised of the last two (2) digits of the year, two (2) digits indicating the month in which it is first scheduled to be heard, and the serial number in two (2) digits of the particular for that month. For example, the fourth application, appeal or petition filed for hearing May 1992, would be numbered "920504".

SECTION 2.6 - NON-COMPLYING APPLICATIONS

Upon preliminary review, if the Chairman of the Board deems an application, appeal or petition inadequate to a proper understanding of the matter or otherwise incomplete or not properly filed, the applicant, appellant or petitioner may be so notified in writing and given the opportunity before a specified date, not later than seven (7) days before the date of the hearing, to bring the application into compliance. An application, appeal or petition, which is subject of such notice but is not brought into compliance before the date specified in such notice, may be denied for failure to comply with the Board's Rules of Procedure.

SECTION 2.7 - WITHDRAWAL

An application may be withdrawn without prejudice by notice in writing filed with the Town Clerk at any time prior to the advertisement of a public hearing thereon. After the hearing is advertised, withdrawal shall require the Board's approval and shall be upon such conditions as the Board may specify.

ARTICLE III - NOTICE OF HEARING AND OF DECISION

SECTION 3.1 - NOTICE

Notice of hearing shall be advertised as required by the provisions of Chapter 40A of the General Laws. Copies of the notice of hearing shall be posted in a conspicuous place in the Town Hall at least fourteen (14) days prior to the date of the hearing and sent by mail, postage prepaid, to the applicant, appellant or petitioner to all "parties of interest" as defined in Section 11 of said Chapter 40A, to any non-resident property owner who has duly filed a relevant request with the Town Clerk pursuant to Section 5 of Chapter 40A, to the owners of all other property deemed by the Board to be affected thereby as they appear on the most recent local tax list and to all other persons specified by law.

In addition, a copy of the notice of hearing shall be delivered by hand or sent by mail, postage prepaid, to each of the following officials and agencies of the Town at least fourteen (14) days prior to the date of the hearing: Town Clerk, Planning Board, Board of Health, Chief of the Fire Department and the Board of Assessors. The instructions, a copy of which is attached hereto as Form B1 or Form B2, shall be enclosed with the copy of the notice sent to the applicant, appellant or petitioner.

SECTION 3.2 - REQUEST FOR NOTICE

Any request for notice of decision pursuant to Section 15 of said Chapter 40A, must be submitted in person to the person presiding at the hearing. Such request shall be in writing and shall include the name of the applicant, the hearing date and the full name and complete address of the person requesting notice.

SECTION 3.3 - NOTICE OF DECISION

A copy of each memorandum of decision, together with a copy of all plans referred to therein, shall be delivered by hand or mailed, postage prepaid, to the Planning Board of the Town.

A copy of each memorandum of decision shall be mailed, postage prepaid, both to the owner and to the applicant, appellant or petitioner, together with a certificate that copies of the decision and all plans referred to therein, have been filed with the Town Clerk.

Notice of each decision shall be delivered by hand or mailed to those listed in the third sentence of Section 3.1 of the Board's Rules of Procedure and shall be mailed, postage prepaid, to all other persons specified in Sections 3.1 and 3.2.

Such notice shall state the right of appeal to the courts as provided by Section 17 of said Chapter 40A.

SECTION 3.4 - APPROVAL

Whenever a decision required that plans be approved by the Board, the sole purpose for such approval is to ensure that the applicant or petitioner understands and will properly implement the Board's decision. The Board's approval may be evidenced by the signature of the Board or of any officer of the Board on its behalf by vote of the Board.

SECTION 3.5 - MODIFICATION OF DECISION

In order to correct typographical or other clerical errors, any decision may be modified by the Board without reapplication or public hearing.

In the case of an appeal to the court pursuant to Section 17 of said Chapter 40A or for other good cause shown, extensions of the limitation of variances or special permits imposed by Sections 10 and 9, respectively, of said Chapter 40A or by the Zoning By-Law may be granted by the Board upon application prior to the extension date of such variance or special permit as provided by said Chapter 40A.

ARTICLE IV - PROCEDURE BEFORE BOARD

SECTION 4.1 - MEETINGS OF BOARD

Two (2) members, including associate members designated to sit, shall constitute a quorum for meetings.

A regular meeting shall be held by the Board at the Town Hall beginning at 7:30 p.m. on the first Monday and the fourth Thursday of each month or, if that day is a holiday or an

election day, on the next business day. The chairman may cancel or postpone the regular meeting whenever, in his or her opinion, no meeting is required by business then pending. A public hearing will not normally be scheduled unless and until there are at least two (2) applications, appeals or petitions to be heard.

Special meetings or emergency meetings may be called by the chairman or by any two (2) members. Actual notice thereof shall be given to each member at least forty-eight (48) hours before the time set for the meeting and public notice shall be posted as required by law.

Three (3) members, including associate members designated to sit, shall constitute a quorum for hearings, except that less than a quorum may adjourn, postpone, recess or continue a hearing.

SECTION 4.2 - WRITTEN STATEMENTS

Any written statement, including but not limited to a legal brief, filed with the Town Clerk not later than the day of the hearing or submitted to the Board at the hearing, will be received and considered. Such written statements shall be public records open to examination and may, but need not, be read publicly at the hearing. The Board may also receive and consider written statements filed with the Board within such time after the hearing as may be fixed by the Board in its discretion.

SECTION 4.3 - APPEARANCE

All hearings shall be open to the public. no person shall be excluded unless he or she is ruled out of order and is disrupting the meeting or hearing or is determined by the Chairman to be a "serious hindrance" to the Board's work.

Any person may appear in his or her own behalf or be represented by an agent or attorney-in-fact who may (but need not) be an attorney-at-law. The unexcused absence of any appearance on behalf of an applicant, appellant or petitioner shall be cause for denial of the application appeal or petition for want of prosecution. However, the Board, in its discretion, may decide the matter on the basis of such information as is available to the Board.

SECTION 4.4 - PROCEDURE AT HEARINGS

Each person, before commenting, shall state his or her name and address and representative capacity, if any.

Persons may be recognized in the following order: first, principal statement by applicant, appellant or petitioner; second, in an appeal, statement by the owner(s) of the property in question; third, statements by other Town agencies; fourth, statement in support of the proposal; fifth, statements in opposition, and; sixth rebuttal by applicant, appellant or petitioner. The members of the Board may ask questions at any time during the hearing.

All statements at the hearing will be made to the Board and all questions must be posed through the Board. No dialogue between persons attending the hearing will be permitted.

Except to answer a specific question at the request of the Board, no person will be recognized more than once until after everyone who desires to be heard has had the opportunity to speak. Every speaker is encouraged to be concise and to avoid repetition; a speaker may join in or incorporate by reference any statement previously made.

All materials exhibited to the Board, or true copies thereof, shall be retained as part of the Board's files.

SECTION 4.5 - CONTINUATION OF HEARING

Whenever the Board deems postponement or continuation to be desirable for orderly administration of the Zoning By-Law, the Board may continue the hearing to a date and time certain. If the date and time of continuation is announced during the originally scheduled hearing, such continued hearing may be held without further application or notice or advertisement.

SECTION 4.6 - DECISION

In each case, the Board shall file a formal written memorandum, signed by the members sitting which sets forth the Board's findings and conclusions and the reason or reasons for the Board's decision and actions. Any vote or decision in the absence of such a memorandum is preliminary and tentative.

Except as otherwise provided in the Board's Rules of Procedure, the concurring vote of all three (3) members of the Board shall be necessary for the Board to grant relief in any case. The Board's memorandum of decision shall show the vote of each member of the quorum sitting on each case or, in the event that a member fails to vote, an indication of that fact.

The Board's decision shall be effective and the one (1) year to exercise the rights authorized by the grant of the variance, shall begin as of the date the signed memorandum, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied. Provided, the memorandum shall be filed within fourteen (14) days of the date of the vote, granting or denying a variance.

SECTION 4.7 - RECORDING

It shall be condition precedent to the exercise of any right pursuant to any decision of the Board that notice of the decision and of the absence of any appeal be recorded within

twenty (20) days at the applicant, appellant or petitioner's expense, in the Middlesex North District Registry of Deeds.

SECTION 4.8 - OTHER REQUIREMENTS

The decision of this Board relates only to Zoning By-Law requirements and does not excuse the applicant from compliance with the building code and all other applicable laws, By-Laws, and regulations. Despite favorable action of the Board, each applicant, appellant or petitioner must secure a building permit as the case may be and all other necessary approvals and permits from other Town agencies, including, but not limited to, the Board of Health, The Board of Selectmen, the Planning Board and the Conservation Commission.

SECTION 4.9 - RE-APPLICATION

In order to have an application, appeal or petition heard within two (2) years after final denial of a request for the same relief (unless such denial was without prejudice), the applicant or petitioner must request permission from both the Planning Board and this Board, showing by new evidence substantial and specific changes of relevant conditions. This Board will not consider the merits of a request for relief unless and until at least four (4) members of the Planning Board have agreed, after a hearing with notice, that this condition has been met. Proceedings for such permission from this Board may, in the discretion of this Board, be joined either with such proceedings before the Planning Board.

ARTICLE V - GENERAL

SECTION 5.1 - EFFECTIVE DATE

The Board of Appeals Rules of Procedure shall take effect on the date adopted by the Board.

No amendment to their rules shall be applicable with respect to any application, appeal or petition filed with the Town Clerk before such amendment is adopted by the Board. The rules in effect at the time an application, appeal or petition is filed shall, despite any amendment, govern all proceedings with respect to that application, appeal or petition.

SECTION 5.2 - AMENDMENT

These rules may be amended at any time by the affirmative votes of a majority of the Board. Associate members may participate in consideration of such amendments with voice but without vote.

SECTION 5.3 - WAIVER

The Board may, by unanimous vote, waive any provision in a particular case for good cause shown, provided that such waiver shall not be inconsistent with any provision of the Zoning By-Law or the General Laws.

SECTION 5.4 - RECORDS

The docket of the Board shall be kept current and posted in a well-bound book containing the number of the application, the name of the applicant, appellant or petitioner a short description by street number or otherwise of the premises and the final disposition. All continuances, postponements, dates of sending notices, dates of advertisements, date of hearing, decision, filing and notice of sending of decision, other steps taken and acts done shall be noted on the docket.

SECTION 5.5 - MINUTES

The minutes of the Board shall include the record of all meetings and hearings, the decisions relating to each case, the vote of each member, those absent being so marked and all other official actions of the Board.

SECTION 5.6 - ORDER OF BUSINESS

The order of business at all regular meetings of the Board may generally be as follows:

1. Roll call;
2. Reading of minutes of previous meeting;
3. Communications;
4. Report of committees;
5. Unfinished business; and
6. New business.

SECTION 5.7 - BRIEF TO THE BOARD

The Board recommends that every application, appeal and petition be supported by a brief which sets forth in detail all facts relied upon. Pursuant to General Laws, Chapter 40A, Section 15, the following points should be clearly identified and factually supported with regard to an application for a variance.

1. The particular use proposed for the land or building;

2. The conditions especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located;
3. Facts which make up the substantial hardship, financial or otherwise, which result from literal enforcement of the applicable zoning restrictions with respect to the land or building for which a variance is sought;
4. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good;
5. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

In application for special permits and in filing appeals, the briefs should contain facts and information with regard to the special permit which support the specific requirements of the Zoning By-Law and M.G.L., C 40A, S. 9 for uses which are in harmony with the general purpose and intent of the Zoning By-Law and the general on specific provisions of the Zoning By-Law.

Briefs should be filed prior to or at the public hearing.

SECTION 5.8 - ADVICE

Any advice, opinion or information give by any Board member or any other official or employee of the Town of Tewksbury shall not be binding on the Board. Occasionally, individuals appeal personally to members of the Board, the declared policy of the Board is to discourage any such personal ex parte communications.